



Understanding Community Property and Veteran Ownership

Issue:

This brief defines community property and how it is used to determine Veteran ownership.

(For purposes of this brief, Veteran applies equally to Service-Disabled Veterans; applicant refers to the business entity applying for verification; and participant refers to a business entity that has already been verified.)

The Regulation:

38 CFR § 74.3(f) states that “[i]n determining ownership interests when an owner resides in any of the community property States or territories of the United States, the...[Center for Verification and Evaluation (CVE)] considers applicable State community property laws. If only one spouse claims veteran status, that spouse’s ownership interest will be considered unconditionally held only to the extent it is vested by the community property laws.”

What This Means:

Community property is made up of assets that come into the marriage during the marriage through any means other than inheritance or gift. Assets acquired by the husband or wife, regardless of how those assets are titled, are viewed as assets of the marital community. Not all states recognize community property. In “community property states” (such as California), community property belongs equally to each spouse. (Source: [Cornell University Law School Legal Information Institute](#))

Community property states include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Community property territories include Puerto Rico and Guam.

If a Veteran owner resides in any of the community property states or territories and is married, the Veteran is presumed to only own an undivided half (i.e., 50 percent of the community property). The Veteran can submit evidence that this is not the case (i.e., the property is legally treated as separate property).

Example

Veteran John Smith owns 100 percent of Example, LLC; he is married to a non-Veteran; and he lives in Arizona. According to community property laws, he would only be regarded as holding an undivided 50 percent interest in Example, LLC. He would not meet the ownership requirements of 38 CFR § 74.3.

If Veteran John Smith and his spouse execute a document that confirms that he owns one percent of Example, LLC as his sole and separate property, the Veteran would only be considered as holding a 50.5 percent interest in the concern for community property purposes. Specifically, if Veteran Smith acquires a one percent interest in Example, LLC as his sole and separate property, a 99 percent interest would remain subject to State community property law. This remaining 99 percent interest is divided by two, leaving a 49.5 percent community property interest in both Veteran Smith and his spouse. After adding Veteran Smith’s one percent sole and separate property interest to his undivided 49.5 percent community property interest, his total undivided ownership interest in Example, LLC equals 50.5 percent.

To solve this issue, Veteran Smith would have to acquire at least a two percent interest in Example, LLC as his sole and separate property.

With a two percent ownership interest held by Veteran Smith as his sole and separate property, there would remain a 98 percent interest subject to State community property law. This remaining 98 percent interest is divided by two, leaving an undivided 49 percent community property interest in both Veteran Smith and his spouse. After adding Veteran Smith's two percent sole and separate property interest to his undivided 49 percent community property interest, Veteran Smith's total interest in Example, LLC for purposes of determining ownership equals 51 percent.

What Veteran John Smith could do in order to meet the ownership requirements is to provide CVE with documentation proving that he owns his interest in Example, LLC as his sole and separate property (i.e., by having his spouse provide a letter waiving her interest in the community property) or that the Veteran's interest in Example, LLC is not subject to the community property laws for another reason (i.e., it was acquired prior to marriage).

In the case of multiple Veteran owners, ownership percentages are combined to determine eligibility.

Example

In the case of two Veteran owners, one single, and the other married, each owning 50 percent of the applicant, the single Veteran owner's interest will remain intact at 50 percent, but the married Veteran owner's interest will be 25 percent (i.e., an undivided 50 percent interest of the married Veteran's interest), totaling 75 percent Veteran ownership. In this case, Veteran ownership at the required 51 percent is established without any additional action taken by the spouse of the married Veteran.

Excerpts From Verification Denial Letters:

The following excerpts provide insight into common reasons why some applicants do not meet verification requirements:

- “The VA Form 0877 Verification Application you submitted lists you, the Service-Disabled Veteran, as 100 percent owner of Example, Inc. Your business is in the State of Arizona. Arizona is a community property State. This means that property owned by one spouse in the marriage is considered to be jointly the property of both spouses. 38 CFR § 74.3(f) states that, “[i]n determining ownership interests when an owner resides in any of the community property States or territories of the United States, CVE considers applicable State community property laws. If only one spouse claims Veteran status, that spouse's ownership interest will be considered unconditionally held only to the extent it is vested by the community property laws.” This would mean that you and your spouse, a non-Veteran, are each considered to own an undivided 50 percent interest in the company. You have not provided any evidence to support that the ownership interest in the applicant is separate or non-community property. Therefore, CVE is unable to reasonably conclude that you meet the 51 percent ownership requirement of 38 CFR § 74.3.”
- “In response to a document request from the CVE examiner, you stated that your business is a sole proprietorship. The VA Form 0877 Verification Application you submitted as a Service-Disabled Veteran-Owned Small Business lists you as the 100 percent owner. Your tax documents list you as the proprietor of the business. California is a community property state. Community property laws are such that property owned by one spouse in a marriage is considered the joint property of both spouses. 38 CFR § 74.3(f) states that, “[i]n determining ownership interests when an owner resides in any of the

community property States or territories of the United States, CVE considers applicable State community property laws. If only one spouse claims Veteran status, that spouse's ownership interest will be considered unconditionally held only to the extent it is vested by the community property laws." As the 100 percent owner, this would mean that you and your spouse are each considered to own an undivided 50 percent interest in the company. While both of you are Veterans, only you are a Service-Disabled Veteran. Therefore, CVE is unable to conclude that you meet the 51 percent ownership requirement of 38 CFR § 74.3."

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For more information about VA Small and Veteran Business Programs, visit <http://www.va.gov/osdbu>.

VA Office of Small and Disadvantaged Business Utilization

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